In the High Court of Judicature at Madras

Dated:11.07.2006

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice V. DHANAPALAN

Habeas Corpus Petition No.403 of 2006

Selvam .. Petitioner/Detenue

vs.

1. The Secretary to Government
   Prohibition and Excise Department
   Government of Tamil Nadu
   Fort St. George
   Chennai 600 009.

2. The Commissioner of Police
   Greater Chennai
   Egmore, Chennai 8. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of writ of habeas corpus call for the entire records leading to the detention of the petitioner namely Selvam S/o. Arjunan has been detained vide detention order dated 10.3.2006 on the file of the 2nd respondent herein made in Memo No.67/BDFGISV/06 quash the same and consequently direct the respondents herein to produce the body and person of the said detenu before this Court and thereafter set him at liberty as stated therein.

For petitioner : Mr. M. Rajavelu

For respondents : Mr. M. Babu Muthu Meeran
Addl. Public Prosecutor

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ORDER

(Order of the Court was made by P.SATHASIVAM, J.)

The petitioner by name Selvam, challenges the impugned order of detention dated 10.03.2006, detaining him as "Goonda" under Section 3 (1) of the Tamil Nadu Prevention of Dangerous activities of

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Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1981 (Tamil Nadu Act 14 of 1982).

2. Heard both sides.

3. At the foremost, the learned counsel for the petitioner by drawing our attention to para 4 of the grounds of detention submitted that though bail was granted in respect of Crime Nos.987/2005, 70/2006 and 73/2006 on the file of J9 Thuraipakkam Police Station, the detaining authority proceeded on the misconception and incorrect fact that the detenu has not moved any bail application so far. In support of the above contention, the learned counsel has placed the details regarding copy of the bail petition and orders passed therein, which show that the detenu has moved bail application for the first adverse case in Crime No.987 of 2005 on 07.02.2006 and the same was dismissed by the learned Judicial Magistrate, Alandur at Chennai in Crl.MP.No.817 of 2006 on 13.02.2006 and again the detenu moved another bail petition on 03.03.2006 and the same was dismissed by the learned Judicial Magistrate, Alandur at Chennai in Crl.MP.No.1459 of 2006 on 08.03.2006. As rightly pointed out, this fact was suppressed by the sponsoring authority and the detaining authority has come out with incorrect statement, viz., that the detenu has not moved any bail application so far, which amply shows the non-application of mind on the part of the detaining authority.

4. The learned Additional Public Prosecutor by drawing our attention to Sub-clause (3) and (4) of para 12 of the judgment in the case of Abdul Sathar Ibrahim Manik vs. Union of India and others reported in 1992 SCC (Crl.) 1 contended that there is no error or any other flaw in arriving subjective satisfaction regarding imminent possibility of coming out on bail.

5. We verified the conclusion arrived at by the Hon'ble Supreme Court in the above cited decision 1992 SCC (Crl.) 1. Sub-Clause 3 and 4 of paragraph 12 of the above cited decision relates to non-supply of copies of bail application or the order refusing the bail to the detenue and they also observed that failure to supply the copies of bail application or refusing bail would not affect the detenu's right in making effective representation. In our case, the grievance of the petitioner is that the detenu moved bail applications in respect of Crime Nos.987 of 2005 and 70 of 2006 and were dismissed, by the learned Magistrate, but the detaining authority without reference to the same has stated that the detenu has not moved any bail application, which is factually in correct and also reflects his non application of mind on the relevant materials. Accordingly, we accept the contention of the learned counsel for the petitioner and on this ground the impugned detention order is liable to be quashed; accordingly, this petition is allowed. The order of detention

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impugned in the petition is set aside and the detenu is directed to be set at liberty forthwith from the custody unless he is required in connection with any other case.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Secretary to Government
   Prohibition and Excise Department
   Government of Tamil Nadu
   Fort St. George
   Chennai 600 009.

2. The Commissioner of Police
   Greater Chennai
   Egmore, Chennai 600 008.

3. The Superintendent
   Central Prison, Chennai.

4. The Director General of Police
   Tamil Nadu, Chennai 4.

5. The Public Prosecutor
   High Court, Madras.

TEJ (CO)
km/14.7.

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